



[4830-01-p]

## DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9635]

RIN 1545-BK89

Debt That is a Position in Personal Property That is Part of a Straddle

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the application of the straddle rules to a debt instrument. The temporary regulations clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. The temporary regulations primarily affect taxpayers that issue debt instruments that provide for one or more payments that reference the value of personal property or a position in personal property. The text of these temporary regulations also serves as the text of the proposed regulations (REG-111753-12) set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Dates: For date of applicability, see §1.1092(d)-1T(e).

FOR FURTHER INFORMATION CONTACT: Mary Brewer, (202) 622-4695 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### BACKGROUND AND EXPLANATION OF PROVISIONS

#### 1. Summary of Prior Notice of Proposed Rule Making

This document contains amendments to 26 CFR part 1. On January 18, 2001, a notice of proposed rulemaking (REG-105801-00; RIN 1545-AX92) (the 2001 NPRM) was published in the **Federal Register** (66 FR 4746). The 2001 NPRM addresses the definition of personal property for purposes of section 263(g) of the Internal Revenue Code (Code), the types of expenses subject to capitalization, and the operation of the capitalization rules. Another portion of the 2001 NPRM (proposed regulation §1.1092(d)-1(d)) would clarify the circumstances under which an issuer's position under a debt instrument is treated as a position in personal property that is part of a straddle.

No public hearing was requested or held. Written and electronic comments responding to the 2001 NPRM were received, and the only commenter that substantively addressed proposed §1.1092(d)-1(d) urged its adoption. This Treasury Decision adopts proposed §1.1092(d)-1(d) (REG-105801-00) in the form proposed. As so adopted, this provision is designated as §1.1092(d)-1T(d). This Treasury Decision also adopts the 2001 NPRM's proposed amendment to the effective/applicability dates (proposed §1.1092(d)-1(e)). As so adopted, this effective/applicability date is designated as §1.1092(d)-1T(e)(2). The amendments are discussed in section 2 of this preamble. The remainder of the 2001 NPRM remains proposed.

## 2. Overview of the Temporary Regulations

The temporary regulations provide guidance under section 1092 regarding when an issuer's obligation under a debt instrument may be a position in actively traded personal property and, therefore, may be part of a straddle.

### Definition of personal property for purposes of section 1092

Section 1092(d)(1) defines "personal property" to mean "personal property of a type that is actively traded." A debt or obligation generally is not property of the debtor or obligor. Nevertheless, if a debt instrument provides for payments that are (or are reasonably expected to be) linked to the value of personal property as so defined, then the obligor on the instrument has a position in the personal property referenced by the debt instrument.

Section 1092(d)(7) provides that if a debt instrument is denominated in a nonfunctional currency, the obligor's position under the debt obligation is a position in the nonfunctional currency. Some maintain that section 1092(d)(7) evidences an intent by Congress to limit the circumstances in which an obligor's interest in a debt instrument may be a position in a straddle, and that such treatment is proper only with respect to debt obligations denominated in nonfunctional currency. The IRS and the Treasury Department do not believe that section 1092(d)(7) describes the only circumstance in which an obligor's interest in a debt instrument may be treated as part of a straddle. The statute and the legislative history do not contain any indication that Congress intended to limit section 1092 in this manner; rather, the legislative history characterizes section 1092(d)(7) as a clarification of prior law:

The Senate amendment clarifies that an obligor's interest in a foreign currency denominated obligation is a "position" for purposes of the loss

deferral rule. The rationale for this treatment is that a foreign currency borrowing is economically similar to a short position in the foreign currency.

H.R. REP. NO. 99-841, pt. 2, at 670 (1986) (Conf. Rep.); 1986-3 (Vol. 4) CB 670.

Moreover, it is clear that an economic exposure associated with an obligation that is not a debt instrument (such as a written option or the obligation created by a short sale) may be a straddle position. Similarly, a debt instrument may be a position in personal property, and accordingly subject to the straddle rules, if the obligation is linked to personal property. Therefore, §1.1092(d)-1T(d) of the temporary regulations expressly provides that an obligation under a debt instrument may be a position in personal property that is part of a straddle.

#### Dates of Applicability of the Regulations

The temporary regulations adopt the effective/applicability date set forth in the 2001 NPRM by providing that §1.1092(d)-1T(d) applies to straddles established on or after January 17, 2001 (the date on which the 2001 NPRM was filed with the **Federal Register**). No inference is intended with respect to straddles established prior to January 17, 2001. In appropriate cases, the IRS may take the position under section 1092(d)(2) that, even in the absence of a regulation, an obligation under a debt instrument was part of a straddle prior to the effective date of §1.1092(d)-1T(d) if the debt instrument functioned economically as an interest in actively traded personal property.

#### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order

13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Drafting Information**

The principal author of these regulations is Mary Brewer, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.1092(d)-1T also issued under 26 U.S.C. 1092(b)(1). \* \* \*

Par. 2. Section 1.1092(d)-1 is amended by redesignating paragraph (d) as

newly-designated paragraph (e) and revising newly-designated paragraph (e), and adding new paragraph (d) to read as follows:

§1.1092(d)-1 Definitions and special rules.

\* \* \* \* \*

(d) [Reserved]. For further guidance, see §1.1092(d)-1T(d).

(e) Effective/applicability dates. (1) Paragraph (b)(1)(vii) of this section applies to positions entered into on or after October 14, 1993. Paragraph (c) of this section applies to positions entered into on or after July 8, 1991.

(2) [Reserved]. For further guidance, see §1.1092(d)-1T(e)(2).

Par. 3. Section 1.1092(d)-1T is added to read as follows:

§1.1092(d)-1T Definitions and special rules (temporary).

(a) through (c) [Reserved]. For further guidance, see §1.1092(d)-1(a) through (c).

(d) Debt instrument linked to the value of personal property. If a taxpayer is the obligor under a debt instrument one or more payments on which are linked to the value of personal property or a position with respect to personal property, then the taxpayer's obligation under the debt instrument is a position with respect to personal property and may be part of a straddle.

(e) Effective/applicability dates--(1) [Reserved]. For further guidance, see §1.1092(d)-1(e)(1).

(2) Notwithstanding paragraph (e)(1) of this section, paragraph (d) of this section applies to straddles established on or after January 17, 2001.

(f) Expiration date. The applicability of this section expires on September 2, 2016.

Beth Tucker

Deputy Commissioner for Operations Support.

Approved: August 26, 2013

Mark J. Mazur

Assistant Secretary (Tax Policy).

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